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Applicant: HEUER
Serial #: 09/_____ (div. of S.N. 09/ 150,150)
Attorney ref. #: 902-739.1
Filed: JAN. 23, 2001 via Express Mail EL 762 606 369 US
For: METHOD FOR TRANSMITTING DATA PACKETS . . .

PETITION TO CONSTRUE APPLICATION AS FILED UNDER RULE 53(b)

Commissioner for Patents
Washington, D.C. 20231

JULY 25, 2001

Sir:

After closing of prosecution in S.N. 09/ 150,150 and payment of the Issue Fee therein on JAN. 18, 2001, Applicant filed a divisional application on JAN. 23, 2001, together with copies of the application papers of parent application S.N. 09/ 150,150, a Preliminary Amendment, a Proposed Drawing Correction, and a Patent Application Bibliographic Data Sheet and a Petition for Suspension of Prosecution "in this divisional application" for 3 months, stating that "U.S. counsel needs time to confer with European counsel because a Petition to Make Special will probably be filed and the appropriate scope of the claims must be reassessed in the light of all known prior art." Serial No. 09/ 150,150 matured into US Patent 6,236,660 on MAY 22, 2001, as Applicant intended. Applicant received no response to the Petition for Suspension of Prosecution.

By mistake, a transmittal form PTO/SB/29 was used, which referred to Rule 53(d). An "Express Mail" certificate box was placed in the middle of the first page, **obscuring** the warning

I hereby certify that this document is being deposited, pursuant to 37 C.F.R. 1.8, in the U.S. Mail, first-class postage prepaid, addressed to the Commissioner for Patents, Washington, D.C. 20231, on JULY 26, 2001.

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Milton Oliver

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that filing under Rule 53(d) implied a request to abandon the prior application and to put the new application in the **same** file wrapper. It **was not** counsel's intention to abandon the prior application, according to former "Rule 62" practice. It **was** counsel's intention, according to former "Rule 60 divisional" practice, that the divisional be assigned a **new** serial number and a **new** file wrapper; otherwise, counsel would not have submitted a **complete copy** of the parent application, would not have submitted a new IDS with references already considered in S.N. 09/150,150, and would not have submitted a Preliminary Amendment making the same specification changes as made in the parent application. Counsel's intention was further manifested by the simultaneous filing in S.N. 09/ 150,150 of a "Notification of Filing of Divisional Application"; such notification would not be necessary if the **same** file wrapper were to be maintained.

Furthermore, it would have been illogical to request suspension of prosecution (and spend \$130 as Petition Fee) in an application in which prosecution was **already closed** and the Issue Fee was **already paid**.

In view of the foregoing facts, Applicant hereby petitions that the Commissioner exercise his authority under 35 U.S.C. § 182 to construe the divisional application as filed under Rule 53(b) rather than Rule 53(d), and to assign a new serial number to the application filed JAN. 23, 2001. Submitted herewith is a Petition Fee in the amount of \$130.00. If any additional fee is required, kindly charge to Deposit Account 23-0442.

Respectfully submitted,

Milton Oliver

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Att. Docket No. 902-739.1

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EXHIBITS TO PETITION:

- A Transmittal PTO/SB/29 with superimposed Express Mail cert.
- B Application Data Sheet
- C Preliminary Amendment dated JAN. 23, 2001
- D Copies of checks for filing fee & suspension petition fee
- E Petition for Suspension of Prosecution
"in this divisional application."
- F Notification of Filing of Divisional Application
(filed in parent application S.N. 09/ 150,150).
- G Proposed Drawing Correction
captioned "Serial #: Divisional of (Allowed) 09/ 150,150".
- H Information Disclosure Statement.
- I copy of text, drawings & declaration of parent case.
- J Notice of Recordation & copy of assignment of parent case.
- K Front page of USP 6,236,660 resulting from S.N. 09/ 150,150.

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